

DEC 23 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: ANDREW AN-TZE CHENG; In re:
YVONNE E-FUNG CHENG,

Debtors,

K&S DIVERSIFIED INVESTMENTS,
INC.,

Appellant,

v.

ANDREW AN-TZE CHENG; YVONNE
E-FUNG CHENG,

Appellees.

No. 04-55741

BAP No. CC-03-01352-KMaB

MEMORANDUM^{*}

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Brandt, Marlar, and Klein, Bankruptcy Judges, Presiding

Argued and Submitted December 7, 2005
Pasadena, California

Before: PREGERSON, NOONAN, and THOMAS, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

As the parties are familiar with the facts and the procedural history of the case, we go at once to the dispositive issue. The Chengs acted as debtors when they filed the Lien Motion to protect their homestead exemption. The Chengs acted as debtors-in-possession when they filed an Objection to the K&S claim. As they acted in a different capacity they were not estopped by representations made as debtors. Moreover, it would be inequitable to allow K&S to assert its increased claim without the Chengs having opportunity to challenge it. Consequently, the judgment of the Bankruptcy Appellate Panel is AFFIRMED, and, in accordance with the judgment, the case is REMANDED to the Bankruptcy Court.